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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

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JENNY CRAIG INC.

07 CV 2382 BTM RBB

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

KIM MCBRIDE, TERRY  
SALAZAR, TAMMY HELBLE, and  
NANCY MELLO, individually and  
on behalf of all others similarly  
situated,

Plaintiffs,

v.

JENNY CRAIG INC., a Delaware  
corporation; JENNY CRAIG  
DIRECT, INC., a Delaware  
corporation; and DOES 1 through  
10, inclusive,

Defendants.

CASE NO.

NOTICE OF REMOVAL OF CIVIL  
ACTION UNDER 28 U.S.C. 1441(B)

[SAN DIEGO SUPERIOR COURT  
CASE NO. 37-2007-00082215-CU-OE-  
CTL]

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant JENNY CRAIG INC.

(hereinafter "Defendant") hereby removes said action to the United States District  
Court for the Southern District of California pursuant to 28 U.S.C. §§ 1331 and  
1441(b). Removal is based upon the following grounds:

1. An action entitled Kim McBride, Terry Salazar, Tammy Helble,  
and Nancy Mello, individually and on behalf of all others similarly situated,

McDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1 Plaintiffs v. Jenny Craig Inc., a Delaware corporation; Jenny Craig Direct, Inc., a  
2 Delaware corporation; and Does 1 through 10, inclusive, Case No. 37-2007-  
3 00082215-CU-OE-CTL ("Complaint") has been commenced and is now pending in  
4 the Superior Court of California, County of San Diego.

5           2. The Complaint was filed in the state court action on November  
6 21, 2007. Defendant was served and first received a copy of the Complaint on  
7 November 21, 2007. A true and correct copy of the Complaint is attached hereto as  
8 Exhibit "A." Defendant also was served with a Notice of Errata. A true and correct  
9 copy of the Notice of Errata is attached as Exhibit "B." Defendant has not been  
10 served with any other pleadings, papers and/or orders in the state court action. A  
11 true and correct copy of the Answer to the Complaint is attached hereto as Exhibit  
12 "C."

13           3. This Notice of Removal is filed within the 30-day time period  
14 provided by 28 U.S.C. § 1446(b) in that it has been filed within 30 days of  
15 Defendant's service of a copy of the Complaint.

16           4. This is an action over which this Court has original jurisdiction  
17 under 28 U.S.C. § 1331 and is one which may be removed to this Court pursuant to  
18 28 U.S.C. § 1441(b), in that it states claims that arise under the Fair Labor  
19 Standards Act, 29 U.S.C. §§ 200 et seq. Specifically, Plaintiffs allege unpaid  
20 wages and unpaid overtime.

21           5. Plaintiffs' remaining claims arise out of a common nucleus of  
22 operative facts and are, therefore, subject to this Court's supplemental jurisdiction.  
23 28 U.S.C. § 1367.

24           6. All named Defendants who have been served consent to join in  
25 this Notice of Removal. Although the Complaint names as a defendant an entity  
26 identified as "Jenny Craig Direct Inc.," no such entity exists. As such, Jenny Craig  
27 Inc. is the only defendant who needs to consent to this removal.

28

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1 WHEREFORE, based on the foregoing, hereby removes said action to  
2 the United States District Court for the Southern District of California pursuant to  
3 28 U.S.C. §§ 1331 and 1441(b).

4 Dated: December 19, 2007

McDERMOTT WILL & EMERY LLP

5  
6 By: 

Richard Frey  
Attorneys for Defendant  
JENNY CRAIG INC.

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McDERMOTT WILL & EMERY LLP  
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LOS ANGELES



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JENNY CRAIG INC., a Delaware corporation; JENNY CRAIG  
DIRECT, INC., a Delaware corporation; and Does 1 through 10 inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

KIM MCBRIDE, TERRY SALAZAR, TAMMY HELBLE, and NANCY  
MELLO, INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court/Hall of Justice  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER  
(Número del Caso)

37-2007-00082215-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mass & Montes, LLP/Robert Montes Jr.

10100 Santa Monica Blvd., Suite 300, Los Angeles, CA 90064

DATE: NOV 21 2007  
(Fecha)

Clerk, by  
(Secretario)

B. Morgan

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Jenny Craig Inc. a Delaware Corporation  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

MASS & MONTES LLP  
Robert Montes, Jr. (State Bar No. 159137)  
10100 Santa Monica Boulevard  
Suite 300  
Los Angeles, California 90067  
Telephone: (310) 651-9955  
Facsimile: (310) 651-9956

Attorneys for Plaintiffs Kim McBride, Terry Salazar,  
Tammy Helble, and Nancy Mello on behalf of themselves  
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

KIM MCBRIDE, TERRY SALAZAR,  
TAMMY HELBLE, and NANCY MELLO,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

JENNY CRAIG INC.,  
a Delaware corporation;  
JENNY CRAIG DIRECT, INC.,  
a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 37-2007-00082215-CU-OE-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF, AND  
RESTITUTION FOR:**

1. Unpaid Wages and Overtime (FLSA)  
[29 U.S.C. §§ 206, 207(a), 216(b)];
2. Unpaid Wages and Overtime (State)  
[Lab. Code §§ 204, 510, 1194];
3. Failure to Provide Meal Periods  
[Lab. Code §§ 226.7, 512];
4. Failure to Provide Rest Breaks  
[Lab. Code § 226.7];
5. Failure to Provide Accurate Wage  
Statements [Lab. Code § 226];
6. Failure to Timely Pay Wages Due at  
Termination [Lab. Code §§ 201-203];
7. Unfair Business Practices [Bus. & Prof.  
Code § 17200 et seq.];
8. Conversion; and
9. Unjust Enrichment.

DEMAND FOR JURY TRIAL

1 Individual and representative Plaintiffs KIM MCBRIDE, TERRY SALAZAR,  
2 TAMMY HELBLE, and NANCY MELLO ("Plaintiffs"), on behalf of themselves and all  
3 other members of the class alleged herein ("Class"), complain against Defendants  
4 JENNY CRAIG INC., JENNY CRAIG DIRECT, INC., and DOES 1 through 10, inclusive  
5 (collectively "Defendants" or "Jenny Craig"), and plead upon information and belief as  
6 follows:  
7

8 I.

9 JURISDICTION

10 1. This class and collective action seeks recovery of unpaid minimum wages,  
11 unpaid regular wages, and unpaid overtime, plus liquidated damages, interest, attorneys'  
12 fees, and costs pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA"),  
13 which gives state courts concurrent jurisdiction over FLSA claims. This action also seeks  
14 unpaid minimum wages, unpaid regular wages, unpaid overtime, unpaid premium pay for  
15 failure to comply with meal and rest break requirements, statutory penalties for failure to  
16 provide accurate wage statements, and waiting time penalties, plus liquidated damages,  
17 interest, attorneys' fees, and costs pursuant to California Labor Code sections 201, 202,  
18 203, 204, 218.5, 226, 226.7, 510, 512, 1194, 1194.2, 1197, and 1199, as well as  
19 the applicable wage order ("Wage Order") promulgated by California's Industrial Welfare  
20 Commission ("IWC"). Plaintiffs also bring an action for themselves and all other  
21 members of the Class for common law conversion and unjust enrichment, as well as for  
22 Defendants' violations of California Business and Professions Code section 17200, *et*  
23 *seq.*, including full restitution of all compensation retained by Defendants as a result of  
24 their unlawful, fraudulent, and unfair business practices.  
25  
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28

///

## 1 II.

2 VENUE

3 2. Venue as to each Defendant is proper in this judicial district pursuant to  
4 California Code of Civil Procedure sections 395(a) and 395.5 since at least some of the  
5 obligations, liabilities, and breaches complained of herein arose or occurred in the County  
6 of San Diego. Each Defendant either owns, maintains offices, transacts business, has an  
7 agent or agents within the County of San Diego, or otherwise is found within the County  
8 of San Diego and each Defendant is within the jurisdiction of this Court for purpose of  
9 service of process.  
10

## 11 III.

12 PLAINTIFF CLASS

13 3. Plaintiffs KIM MCBRIDE, TERRY SALAZAR, TAMMY HELBLE, and  
14 NANCY MELLO (collectively "Plaintiffs") bring this action on behalf of themselves and on  
15 behalf of the Class of all similarly situated individuals who currently are or have been  
16 employed by Defendants, and each of them, at Jenny Craig Direct call centers in  
17 California and elsewhere in the United States. During the relevant statutory period, Class  
18 representative KIM MCBRIDE ("MCBRIDE") was previously employed as "Program  
19 Director" of Jenny Craig Direct in Carlsbad, California, until her employment ended in  
20 2006. Class representative TERRY SALAZAR ("SALAZAR") was previously employed  
21 as "Consultant" of Jenny Craig Direct in Carlsbad, California, until her employment ended  
22 in 2006. During the relevant statutory period, Class representative TAMI HELBLE  
23 ("HELBLE") was employed as a "Consultant" at Jenny Craig Direct in Carlsbad,  
24 California, until her employment ended in 2006. Class representative NANCY MELLO  
25 ("MELLO") was previously employed as a "Consultant" at Jenny Craig Direct in Carlsbad,  
26  
27  
28

1 California, until her employment ended in 2006.

2 IV.

3 DEFENDANTS

4 4. Plaintiffs are informed and believe, and based thereon allege that at all  
5 relevant times herein, Defendant JENNY CRAIG, INC. ("JC") owns and operates certain  
6 weight control centers ("Jenny Craig Centres") throughout the United States, including  
7 San Diego County, providing services and/or doing business using goods and/or  
8 materials sold across state lines. At all relevant times, JC has been, and continues to be,  
9 an "enterprise" engaged in interstate commerce within the meaning of the FLSA, 29  
10 U.S.C. §§ 203, 206, 207, with gross operating revenues in excess of \$500,000.00. JC is  
11 a corporation organized and existing under the laws of the State of Delaware with its  
12 principal place of business in Carlsbad, California.  
13

14 5. Plaintiffs are informed and believe, and based thereon allege that at all  
15 relevant times herein, Defendant JENNY CRAIG DIRECT, INC. ("JC Direct") owns and  
16 operates certain call centers ("Call Centers") throughout the United States, including San  
17 Diego County, providing the same weight control program goods and services available  
18 at Jenny Craig Centres, but on an "at-home" basis. JC Direct provides services and/or  
19 does business using goods and/or materials sold across state lines. At all relevant times,  
20 JC Direct has been, and continues to be, an "enterprise" engaged in interstate commerce  
21 within the meaning of the FLSA, 29 U.S.C. §§ 203, 206, 207, with gross operating  
22 revenues in excess of \$500,000.00. JC is a corporation organized and existing under the  
23 laws of the State of Delaware with its principal place of business in Carlsbad, California.  
24

25 6. Plaintiffs are informed and believe, and based thereon allege that at all  
26 relevant times herein, each Defendant was an agent, employee, joint-venturer,  
27 shareholder, director, member, co-conspirator, alter-ego, master, or partner of each of  
28

1 the other Defendants, and at all times mentioned herein were acting within the scope and  
2 course and in pursuance of his, her, or its agency, joint venture, partnership,  
3 employment, common enterprise, or actual or apparent authority in concert with each  
4 other and the other Defendants.

5  
6 7. Defendants, and each of them, are individually, jointly, and severably liable  
7 as the employer of Plaintiffs and each Class member because each Defendant directly or  
8 indirectly, or through an agent or another person, employed or exercised control over the  
9 wages, hours, and working conditions of Plaintiffs and the Class. At all times mentioned  
10 herein, the acts and omissions of various Defendants, and each of them, concurred and  
11 contributed to the various acts and omissions of each and every one of the other  
12 Defendants in proximately causing the complaints, injuries, and damages alleged herein.

13  
14 8. At all times mentioned herein, Defendants, and each of them, approved of,  
15 condoned and/or otherwise ratified each and every one of the acts or omissions  
16 complained of herein. At all times herein mentioned, Defendants, and each of them,  
17 aided and abetted the acts and omissions of each and every one of the other Defendants  
18 thereby proximately causing the damages as herein alleged.

19  
20 9. Plaintiffs do not know the true names and capacities of Defendants sued  
21 herein as Does 1 through 10, inclusive, and therefore sue each such Defendant by such  
22 fictitious names. Plaintiffs are informed and believe, and based thereon allege that each  
23 of the Defendants sued herein as Doe is responsible in some manner for the acts,  
24 omissions, or representations alleged herein and any reference to "Defendant" or  
25 "Defendants" shall mean "Defendants and each of them."

26  
27 **V.**

28 **CLASS ACTION ALLEGATIONS**

10. Plaintiffs bring this action on behalf of themselves and all persons similarly

1 situated as a collective action pursuant to 29 U.S.C. § 216(b) for claims under the FLSA  
2 and as a class action under California Code of Civil Procedure section 382 for Labor  
3 Code and other violations. This action may properly be maintained as a class action  
4 pursuant to section 382 of the Civil Procedure Code because there is a well-defined  
5 community of interest in the litigation and the proposed classes are easily ascertainable.  
6

7 11. The "classes" that Plaintiffs seek to represent are composed of and defined  
8 as follows:

9 **FLSA Class:** All persons who are employed or who have been employed  
10 by Defendants at JC Direct Call Centers in the United States under the job  
11 titles including, but not limited to, "Program Director," "Consultant," and/or  
12 equivalent positions within three (3) years preceding the filing of this  
13 complaint and who file their consents to join this collective action as party  
14 plaintiffs pursuant to 29 U.S.C. § 216(b).  
15

16 **California Class:** All persons who are employed or who have been  
17 employed by Defendants at JC Direct Call Centers in the State of California  
18 who have worked under the job titles including, but not limited to, "Program  
19 Director," "Consultant," and/or equivalent positions within four (4) years  
20 preceding the filing of this complaint until the entry of judgment after trial.  
21

22 Members of the proposed FLSA and California Classes will hereinafter be referred to as  
23 "employees," "Program Directors," "Consultants," or "Class Members," as appropriate.

24 12. The California Class is further subdivided into 5 subclasses consisting of:  
25 (1) all nonexempt Class Members who were not paid wages, minimum wages, and  
26 overtime for all hours worked as required by California law ("the Wage Subclass"); (2) all  
27 Class Members who were not provided adequate meal periods as required by Labor  
28 Code sections 226.7 and 512 ("the Meal Period Subclass"); (3) all Class Members who

1 were not provided adequate rest breaks as required by Labor Code section 226.7 ("the  
2 Rest Break Subclass"); (4) all Class Members who were not provided with accurate wage  
3 statements as required by Labor Code section 226 ("the Wage Statement Subclass");  
4 and (5) all Class Members who did not receive all wages and compensation due when  
5 their employment ended as required by Labor Code sections 201-203 ("the Waiting Time  
6 Subclass"). Membership in one Subclass is not mutually exclusive of membership in the  
7 other Subclasses; indeed, it is believed that most members of the first Subclass are  
8 members of the second, third, and fourth Subclasses and that all Class Members no  
9 longer employed by Jenny Craig Direct are also members of the fifth Subclass. Plaintiffs  
10 reserve the right under Rule 1855(b), California Rules of Court, to amend or modify the  
11 Class or Subclass descriptions with greater specificity or further division into subclasses  
12 or limitation to particular issues.  
13

14  
15 **A. Numerosity**

16 13. The Class Members are so numerous that the joinder of all such persons is  
17 impracticable and that the disposition of their claims in a class action rather than in  
18 individual actions will benefit the parties and the Court. While the precise number of  
19 proposed Class Members has not been determined at this time, Plaintiffs are informed  
20 and believe that Defendants currently employ, and/or during the relevant time period  
21 employed, over 100 Program Directors and Consultants.  
22

23 14. The number, identity, and location of the proposed Class Members is  
24 readily ascertainable via inspection of Defendants' employment, personnel, and business  
25 records.

26 **B. Commonality**

27 15. There is a well-defined community of interest in the questions of law and  
28 fact affecting the Class and each Subclass as a whole. These common questions of law

1 and fact predominate over questions affecting only individual members, including, without  
2 limitation:

3 a. Whether Defendants failed to pay each Class Member minimum wages for  
4 all hours worked;

5 b. Whether Defendants failed to pay each Class Member regular wages for all  
6 regular hours worked, including "off-the-clock" time, preliminary time, and postliminary  
7 time;

8 c. Whether Defendants failed to pay each Class Member overtime  
9 compensation for each overtime hour worked;

10 d. Whether Defendants failed to provide each Class Member with at least one  
11 30-minute meal period on every workday of at least 5 hours and a second 30-minute  
12 meal period on every workday of at least 10 hours as required by California law;

13 e. Whether Defendants failed to provide each Class Member with 10 minutes  
14 net rest time for every 4 hours of work, or major fraction thereof, as required by California  
15 law;

16 f. Whether Defendants violated sections 201 to 203 of the Labor Code by  
17 willfully failing to pay all wages and compensation due each Class Member who quit or  
18 who was discharged by Jenny Craig;

19 g. Whether Defendants violated section 226 of the Labor Code by willfully  
20 failing to provide accurate itemized wage statements showing the number of hours  
21 worked by each Class Member and the corresponding hourly rate;

22 h. Whether Defendants improperly retained, converted, appropriated, or  
23 deprived each Class or Subclass member the use of money or sums to which they were  
24 legally entitled;

25 i. Whether Defendants were unjustly enriched by the work and services  
26  
27  
28

1 performed by Class Members without compensation;

2 j. Whether Defendants engaged in unfair business practices in violation of  
3 Business and Professions Code section 17200 *et seq.*;

4 k. Whether Defendants, and each of them, are/were participants in the alleged  
5 unlawful and/or tortuous conduct;

6 l. Whether Defendants' conduct was willful or reckless; and

7 m. The effect upon and the extent of injuries suffered by Plaintiffs and other  
8 members of the Class and Subclasses and the appropriate amount of reimbursement  
9 restitution, damages, or other compensation.  
10

11 **C. Typicality**

12 16. Proof of a common or single state of facts will establish the right of each  
13 member of the Class or Subclasses to recover.  
14

15 17. The claims of the Plaintiffs are typical of the claims of all members of the  
16 Class or Subclasses mentioned herein.

17 **D. Adequacy of Representation**

18 18. Plaintiffs, as representative parties, will fairly and adequately protect the  
19 interests of the Class and have no interests that conflict with or are antagonistic to the  
20 interests of the Class.  
21

22 19. Plaintiffs and counsel are aware of their fiduciary responsibilities to the  
23 Class and are determined to diligently discharge those duties by vigorously seeking the  
24 maximum possible recovery for the Class.

25 **E. Superiority of Class Action**

26 20. There is no plain, speedy, or adequate remedy other than by maintenance  
27 of this class action. A class action is superior to other available means for the fair and  
28 efficient adjudication of this controversy. Each Class Member has been damaged and is

1 entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to  
2 compensate its employees in accordance with California wage and hour law. The  
3 prosecution of individual remedies by each Class Member will tend to establish  
4 inconsistent standards of conduct for Defendants and result in the impairment of Class  
5 Members' rights and the disposition of their interests through actions to which they were  
6 not parties.  
7

8 21. Class action treatment will allow those similarly situated persons to litigate  
9 their claims in the manner that is most efficient and economical for the parties and the  
10 judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered  
11 in the management of this action that would preclude its maintenance as a class action.  
12

#### 13 VI.

#### 14 GENERAL ALLEGATIONS

15 22. Defendants employ and have employed numerous Program Directors and  
16 Consultants at JC Direct Call Centers in California and elsewhere in the United States  
17 during the relevant liability period(s). The Program Directors' and Consultants' primary  
18 duties consist of providing Jenny Craig weight loss services and products.  
19

20 23. Plaintiffs and the proposed classes are and have been, at all times pertinent  
21 hereto, "nonexempt employees" within the meaning of the FLSA, the California Labor  
22 Code, and the implementing rules and regulations of the IWC California Wage Orders.  
23

24 24. As Program Directors and Consultants providing personal weight loss  
25 services, Plaintiffs and the Proposed California Class and Subclasses have at all times  
26 pertinent hereto been covered by IWC Wage Order No. 2.  
27

28 25. Defendants are extremely structured employers that dictate with explicit  
instructions the tasks to be performed by Plaintiffs and employees and the time in which  
the tasks are to be performed.

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1           32. At all relevant times, Defendants have employed all members of the  
2 proposed FLSA Class as employees within the meaning of the FLSA.

3           33. At all relevant times, Plaintiffs and other members of the FLSA Class  
4 worked off-the-clock hours that included overtime hours in excess of forty (40) hours in a  
5 workweek, and Defendants willfully failed to pay them minimum wages and/or overtime  
6 compensation at the legally mandated rate.  
7

8           34. At all relevant times, Defendant willfully, regularly, and repeatedly failed to  
9 make, keep, preserve accurate records required by the FLSA with respect to Plaintiffs  
10 and the other members of the FLSA Class, including records sufficient to accurately  
11 determine the wages and hours of employment pertaining to Plaintiffs and the other  
12 members of the FLSA Class.  
13

14           35. Pursuant to FLSA, 29 U.S.C. §§ 206, 207(a), and 216(b), Plaintiffs and  
15 other members of the FLSA Classes are entitled to damages in the amount of their  
16 respective unpaid regular and minimum wages, unpaid overtime compensation,  
17 liquidated damages as provided by the FLSA, attorneys' fees and costs of this action,  
18 and injunctive relief requiring Defendants to cease and desist from their violations of the  
19 FLSA described herein and to comply with the FLSA, and such other legal and equitable  
20 relief as the Court deems just and proper.  
21

22           36. Pursuant to 29 U.S.C. §§ 216(b) and 256, to become a member of this  
23 FLSA collective action, the party plaintiffs of the FLSA Class are required to opt in to this  
24 action by filing their consents with the Court. Representative Plaintiffs hereby consent to  
25 sue for violations of the FLSA pursuant to 29 U.S.C. §§ 216(b) and 256. Consent to sue  
26 forms for MCBRIDE, SALAZAR, HELBLE, and MELLO are attached hereto as exhibits A,  
27 B, C, and D, respectively.  
28

37. For purposes of notice and other purposes related to this action, the names,

1 addresses, and phone numbers of the putative members of the FLSA Class are readily  
2 available from Defendants. Timely notice of the pendency of this collective action and  
3 the consent to join form can be provided to putative class members of the FLSA Class by  
4 individual mailing of the notice and consent to join form, and by posting the notice and  
5 consent to join form in common areas of each JC Direct Call Center.  
6

7 39. Plaintiffs are informed and believe and thereon allege that there are dozens  
8 of other putative class members of the FLSA Classes who will sign and file consents to  
9 join this collective action.

10 VIII.

11 SECOND CAUSE OF ACTION FOR

12 UNPAID WAGES AND OVERTIME UNDER CALIFORNIA LAW

13 (Against All Defendants)

14  
15 40. Plaintiffs re-allege and incorporate paragraphs 1 through 39, inclusive, of  
16 this Complaint as though fully set forth herein.

17 41. Pursuant to Labor Code sections 204, 215, 216, 218.5, 510, 1174, 1194,  
18 1194.2, 1197, and 1199, it is unlawful for an employer to suffer or permit an employee to  
19 work without paying wages for all hours worked as required by the applicable IWC Wage  
20 Order.  
21

22 42. At all relevant times herein, and consistent with its corporate policies and  
23 procedures, Defendants, acting through its agents, servants, and employees, have  
24 regularly requested, ordered, or otherwise solicited Plaintiffs and the Wage Subclass  
25 members to "clock out" for their meal periods even though Plaintiffs and Wage Subclass  
26 members were in the middle of consulting with customers or otherwise not fully relieved  
27 of their job duties. At all relevant times herein, Defendants, acting through its agents,  
28 servants, and employees, have regularly requested, ordered, or otherwise solicited

1 Plaintiffs and Wage Subclass members not to "clock in" at the beginning of business  
2 hours even though Plaintiff and Wage Subclass members were requested to perform the  
3 duties. At all relevant times herein, Defendants, acting through its agents, servants, and  
4 employees, have regularly requested, ordered, or otherwise solicited Plaintiffs and Wage  
5 Subclass members to "clock out" at the close of business even though Plaintiffs and  
6 Wage Subclass members were in the middle of consulting with customers or otherwise  
7 not fully relieved of their duties.  
8

9 43. At all relevant times herein, Defendants have regularly and consistently  
10 maintained corporate policies and practices of refusing to pay Plaintiffs and Wage  
11 Subclass members for all hours worked.  
12

13 44. Pursuant to Wage Order No. 2, section 2(G), "hours worked" include the  
14 time during which an employee is subject to the control of an employer, and includes all  
15 the time the employee is suffered or permitted to work, whether or not required to do so.  
16

17 45. At all relevant times herein, and consistent with Defendants' corporate  
18 policies and practices, Plaintiffs and Wage Subclass members regularly worked in excess  
19 of 8 hours per day and 40 hours per week, including on the sixth or seventh day of a  
20 workweek, without compensation for each and every hour and overtime hour worked.  
21

22 46. Under the provisions of the Labor Code and the applicable Wage Order,  
23 Plaintiffs and each Wage Subclass member should have received regular wages in a  
24 sum according to proof for the hours worked, but not compensated, during the relevant  
25 liability period. Defendants therefore owe Plaintiffs and each Wage Subclass member  
26 regular wages and have failed and refused, and continue to fail and refuse, to pay  
27 Plaintiffs and Wage Subclass members the amounts owed.  
28

47. At all relevant times herein, Defendants have failed to pay Plaintiffs and  
Wage Subclass members overtime wages, including time and a half and double time, for

1 all hours worked in excess of 8 hours a day and/or 40 hours per week as required by  
2 Labor Code section 510.

3 48. Section 4 of the applicable Wage Order requires Defendants to pay its  
4 employees minimum wages for all hours worked, whether measured by time, piece,  
5 commission, or otherwise. Because Defendants failed and refused to compensate  
6 Plaintiffs and Wage Subclass members for all hours worked as set forth above,  
7 Defendants failed to pay Plaintiffs and Wage Subclass members the required minimum  
8 wage rates in effect at the time for all hours worked.  
9

10 49. Labor Code section 1194.2, subdivision (a), provides that, in an action to  
11 recover wages because of the payment of a wage less than the minimum wage fixed by  
12 IWC Wage Orders, an employee is entitled to recover liquidated damages in an amount  
13 equal to the wages unlawfully unpaid and interest thereon.  
14

15 50. Plaintiffs and each Wage Subclass member should have received minimum  
16 wages in a sum according to proof for the hours worked, but not compensated, during the  
17 relevant liability period. Defendants therefore owe Plaintiffs and each Wage Subclass  
18 member minimum wages, as well as liquidated damages, in an equal amount to the  
19 minimum wages owed, and has failed and refused, and continues to fail and refuse, to  
20 pay Plaintiffs and Wage Subclass members the amounts owed.  
21

22 51. As a result of the unlawful acts of Defendants, and each of them, Plaintiffs  
23 and Wage Subclass members have been deprived of minimum wages, regular wages,  
24 and overtime compensation that are owed in amounts to be proven at trial, and are  
25 entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys'  
26 fees and costs pursuant to Labor Code sections 218.5, 1194, and 1194.2.

27 ///  
28

IX.

**THIRD CAUSE OF ACTION FOR**  
**FAILURE TO PROVIDE MEAL PERIODS**

**(Against All Defendants)**

42. Plaintiffs re-allege and incorporate paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

53. At all relevant times herein, Plaintiffs and members of the Meal Period Subclass regularly worked periods in excess of 5 hours without being provided a meal period of at least 30 minutes in which they were relieved of all duties. Furthermore, Plaintiffs and members of the Meal Period Subclass regularly worked in excess of 10 hours per day without being provided a second meal period of at least 30 minutes in which they were relieved of all duties. Such meal periods are required by Labor Code sections 226.7 and 512, as well as the applicable IWC Wage Order.

54. Pursuant to Labor Code section 226.7 and the Wage Order, Defendants are liable to Plaintiffs and members of the Meal Period Subclass for 1 hour of additional premium pay at the regular rate of compensation for each day in which the proper meal period was not provided. In addition, Plaintiffs and members of the Meal Period Subclass are entitled to interest, attorneys' fees, and costs pursuant to Labor Code section 218.5.

X.

**FOURTH CAUSE OF ACTION FOR**  
**FAILURE TO PROVIDE REST BREAKS**

**(Against All Defendants)**

55. Plaintiffs re-allege and incorporate paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

56. At all times relevant herein, Plaintiffs and members of the Rest Break

1 Subclass regularly worked periods in excess of 4 hours, or major fraction thereof, without  
2 being provided a rest break of 10 net minutes as required by Labor Code section 226.7  
3 and the applicable IWC Wage Order. Defendants had no employee policy, poster, or  
4 handbook provision authorizing and permitting Plaintiffs and members of the Rest Break  
5 Subclass to take such rest breaks.

6  
7 57. Pursuant to Labor Code section 226.7 and the Wage Order, Defendants are  
8 liable to Plaintiffs and members of the Rest Break Subclass for 1 hour of additional  
9 premium pay at the regular rate of compensation for each day in which the proper rest  
10 break was not provided. In addition, Plaintiffs and members of the Rest Break Subclass  
11 are entitled to interest, attorneys' fees, and costs pursuant to Labor Code section 218.5.

12  
13 **XI.**

14 **FIFTH CAUSE OF ACTION FOR**

15 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

16 **(Against All Defendants)**

17 58. Plaintiffs re-allege and incorporate paragraphs 1 through 57, inclusive, of  
18 this Complaint as though fully set forth herein.

19 59. Labor Code section 226(a) requires Defendants, each time wages are paid,  
20 to furnish employees with an accurate itemized statement in writing showing, *inter alia*,  
21 the total hours worked by each nonexempt employee and the corresponding hourly rate.

22 60. Labor Code section 226(e) provides that if an employer knowingly and  
23 intentionally fails to furnish an employee with an accurate itemized wage statement, then  
24 the employee is entitled to recover the greater of all actual damages or \$50 for the initial  
25 pay period violation and \$100 for each subsequent violation, up to \$4,000.

26  
27 61. At all relevant times herein, Defendants have knowingly and intentionally  
28 failed to comply with Labor Code section 226(a) by failing to furnish Plaintiffs and

1 members of the Wage Statement Subclass with accurate itemized wage statements  
2 showing total hours worked and the corresponding hourly rate. As a result of  
3 Defendants' knowing and intentional failure, Plaintiffs and Wage Statement Subclass  
4 members have suffered injury in amounts to be proven at trial, and are entitled to  
5 recovery of such amounts and/or statutory damages, together with interest, attorneys'  
6 fees, and costs as provided by Labor Code section 226(e).  
7

8 XII.

9 SIXTH CAUSE OF ACTION FOR  
10 FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION

11 (Against All Defendants)

12 62. Plaintiffs re-allege and incorporate paragraphs 1 through 61, inclusive, of  
13 this Complaint as though fully set forth herein.  
14

15 63. Labor Code sections 201 and 202 require Defendants to pay an employee  
16 all wages due no later than 72 hours after employment ends. Labor Code section 203  
17 provides that if an employer willfully fails to pay such wages, then the employer is liable  
18 to the employee for waiting time penalties in the form of continued compensation at the  
19 employee's daily wage rate for up to 30 days.  
20

21 64. As alleged above, Plaintiffs and members of the California Class are  
22 entitled to compensation for wages, overtime, and premium pay, but to date have not  
23 received such compensation.

24 65. At all times relevant herein, Defendants have willfully failed to pay Plaintiffs  
25 and members of the Waiting Time Subclass their wages due, including unpaid overtime  
26 and premium pay, within 72 hours after their employment ended. As a result, Defendants  
27 are liable to Plaintiffs and the members of Waiting Time Subclass for waiting time  
28 penalties pursuant to Labor Code section 203, together with interest thereon and

1 attorneys' fees and costs.

2 XIII.

3 SEVENTH CAUSE OF ACTION FOR  
4 UNFAIR BUSINESS PRACTICES  
5

6 (Against All Defendants)

7 66. Plaintiffs re-allege and incorporate paragraphs 1 through 65, inclusive, of  
8 this Complaint as though fully set forth herein.

9 67. By the conduct described above, Defendants have violated the provisions  
10 of the Labor Code as specified and have engaged in unlawful, deceptive, and unfair  
11 business practices prohibited by Business and Professions Code section 17200 *et seq.*  
12 Defendants' use of such practices constitutes an unfair business practice, unfair  
13 competition, and provides an unfair advantage over Defendants' competitors.  
14

15 68. The unlawful and unfair business practices complained of herein have  
16 occurred, at least in part, within the last four (4) years preceding the filing of this  
17 Complaint. However, these practices conducted by Defendants are ongoing and present  
18 a threat and likelihood of continuing against Defendants' current employees as well as  
19 other members of the general public. Plaintiffs and the Class are therefore entitled to  
20 injunctive and other equitable relief against such unlawful practices in order to prevent  
21 future damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiffs and the Class  
22 request a preliminary and permanent injunction prohibiting Defendants from the unfair  
23 practices complained of herein.  
24

25 69. Defendants generated income as a direct result of the above-mentioned  
26 unlawful and unfair business practices. Plaintiffs and the Class are therefore entitled to  
27 restitution of any and all monies withheld, acquired, and/or converted by Defendants by  
28 means of the unfair practices complained of herein.

75. Defendants knowingly, willfully, and unlawfully interfered with Plaintiffs' and

1 Class Members' rights to be paid for, own, possess, and/or control disposition of said  
2 sums. The exact amount of monies owed to Plaintiffs and the members of the Class, and  
3 each of them, is capable of being made certain. The specific identifiable sum of money  
4 that Plaintiffs and Class Members are entitled to varies per Class Member and will be  
5 established at trial in an amount according to proof.  
6

7 76. In failing and refusing to pay Plaintiffs and Class Members as alleged  
8 hereinabove, Defendants knowingly, unlawfully, and intentionally took, appropriated, and  
9 converted the property (wages and compensation) of Plaintiffs and Class Members for  
10 Defendants' own use, purposes, and benefits. At the time the conversion took place,  
11 Plaintiff and the Class were entitled to immediate possession of the wages and  
12 compensation owed as provided by the FLSA and California Labor Code.  
13

14 77. Defendants' conversion was oppressive, malicious, and fraudulent, and  
15 Defendants' obligations to pay wages, overtime, and other compensation was concealed  
16 by Defendants, and each of them, from Plaintiffs and Class Members. Defendants have  
17 regularly and consistently maintained corporate policies and procedures that dictated and  
18 mandated that Plaintiffs and Class Members were not to be paid for wages, overtime, or  
19 premium pay for inadequate meal periods and rest breaks. Defendants implemented and  
20 carried out these policies and procedures for the primary purpose of depriving Plaintiffs  
21 and the Class of their right to their wages and other compensation such that Defendants  
22 converted said sums for their own use, as previously alleged.  
23

24 78. Plaintiffs and the Class have been injured by said conversion through  
25 reliance on the Defendants' obligation to comply with applicable federal and California  
26 law. Plaintiffs and the Class are entitled to all money converted by the Defendants with  
27 interest thereon, as well as any and all profits, whether direct or indirect, which the  
28 Defendants acquired by their unlawful conversion. Furthermore, Plaintiffs and the Class

1 have been injured by Defendants' oppressive, malicious, intentional, and fraudulent  
2 actions, entitling Plaintiffs and the Class to punitive and exemplary damages.

3  
4 **XV.**

5 **NINTH CAUSE OF ACTION FOR**

6 **UNJUST ENRICHMENT**

7 **(Against All Defendants)**

8 79. Plaintiffs reallege and incorporate paragraphs 1 through 78, inclusive, of  
9 this Complaint as though fully set forth herein.

10 80. Federal and California common law recognize an equitable remedy for  
11 unjust enrichment or quantum meruit.

12 81. At all relevant times herein, Plaintiffs and Class Members provided services  
13 to Defendants without receiving compensation for those services. Defendants requested,  
14 by words and/or by conduct, that Plaintiffs and Class Members perform services for the  
15 benefit of Defendants. Plaintiffs and Class Members performed the services as  
16 requested, but Defendants have not paid for those services.

17 82. As a result, Defendants have been unjustly enriched, and Plaintiffs and  
18 Class Members have not been compensated for the services performed for Defendants.  
19 Wages remain due and unpaid, and Plaintiffs and Class Members are entitled to the  
20 reasonable value of the services that were provided. Plaintiffs and Class Members seek  
21 the reasonable value of the services provided to Defendants during their rest and meal  
22 periods and other time worked "off the clock," which Defendants benefitted from but  
23 never paid for.

24  
25  
26  
27 ///

28 ///

## XVI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants, and each of them, according to proof, as follows:

- (a) For certification of the First Cause of Action as a collective action pursuant to 29 U.S.C. § 216(b) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. §§ 216(b) and 256;
- (b) For certification of the Second Cause through Ninth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382;
- (c) For appointment of Plaintiffs as the representatives of the Class and Subclasses;
- (d) For appointment of counsel for Plaintiffs as Class Counsel for the Classes and Subclasses;
- (e) For compensatory damages, including unpaid wages, unpaid minimum wages, improperly withheld wages, and overtime, according to proof;
- (f) For liquidated damages pursuant to 29 U.S.C. § 216(b) and Labor Code § 1194.2(a);
- (g) For premium pay pursuant to Labor Code § 226.7;

- 1 (h) For waiting time penalties pursuant to Labor Code § 203;  
2  
3 (i) For statutory damages pursuant to Labor Code § 226(e);  
4  
5 (j) For restitution of all money due to Plaintiffs and Class Members from the  
6 unlawful and unfair business practices of Defendants;  
7  
8 (k) For restitution of all money due to Plaintiffs and Class Members from the  
9 unjust enrichment of Defendants;  
10  
11 (l) For temporary and preliminary orders, and permanent injunctive relief,  
12 enjoining Defendants and their agents, servants, and employees from the  
13 unlawful and unfair business practices alleged herein;  
14  
15 (m) For punitive and exemplary damages under Civil Code § 3294;  
16  
17 (n) For interest as provided by law at the maximum legal rate;  
18  
19 (o) For reasonable attorneys' fees authorized by statute;  
20  
21 (p) For costs of suit incurred herein; and  
22  
23 (q) For such other and further relief as the Court may deem just and proper.

24  
25  
26  
27  
28  
**Dated:** November 20, 2007

**MASS & MONTES LLP**

By: 

**Robert Montes, Jr.**

Attorneys for Plaintiffs Kim McBride, Terry Salazar,  
Tami Helble, and Nancy Mello

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6148	
PLAINTIFF(S) / PETITIONER(S): Kim McBride et.al.	
DEFENDANT(S) / RESPONDENT(S): Jenny.Craig Inc et.al.	
MCBRIDE VS. JENNY CRAIG INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00082215-CU-OE-CTL

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 11/21/2007

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00082215-CU-OE-CTL

CASE TITLE: McBride vs. Jenny Craig Inc

**NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE**

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

**ADR POLICY**

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

**ADR OPTIONS**

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator, 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<b>FOR COURT USE ONLY</b>
PLAINTIFF(S): Kim McBride et.al.	
DEFENDANT(S): Jenny Craig Inc et.al.	
SHORT TITLE: MCBRIDE VS. JENNY CRAIG INC	
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>	CASE NUMBER: 37-2007-00082215-CU-OE-CTL

Judge: Richard E. L. Strauss

Department: C-75

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- |   |   |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program                   | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration           |
| <input type="checkbox"/> Private Neutral Evaluation                         | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial                                 | <input type="checkbox"/> Private Reference to General Referee           |
| <input type="checkbox"/> Private Summary Jury Trial                         | <input type="checkbox"/> Private Reference to Judge                     |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration                    |
| <input type="checkbox"/> Other (specify): _____                             |   |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 11/21/2007

JUDGE OF THE SUPERIOR COURT

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert Montes, Jr. MASS & MONTES, LLP 10100 Santa Monica Blvd., Suite 300 Los Angeles, CA 90067 TELEPHONE NO.: (310)651-9955 FAX NO.: ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 West Broadway MAILING ADDRESS: P. O. Box 122724 CITY AND ZIP CODE: San Diego, CA 92112-2724 BRANCH NAME: Central Division		
CASE NAME: McBride, et al. vs. Jenny Craig, Inc., et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <b>37-2007-00082215-CU-OE-CTL</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☒ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 9
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 19, 2007

Robert Montes, Jr.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition



1 MASS & MONTES LLP  
2 Robert Montes, Jr. (State Bar No. 159137)  
3 10100 Santa Monica Boulevard  
4 Suite 300  
5 Los Angeles, California 90067  
6 Telephone: (310) 651-9955  
7 Facsimile: (310) 651-9956

8 Attorneys for Plaintiffs Kim McBride, Terry Salazar,  
9 Tammy Helble, and Nancy Mello on behalf of themselves  
10 and all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

11 KIM MCBRIDE, TERRY SALAZAR,  
12 TAMMY HELBLE, and NANCY MELLO,  
13 individually and on behalf of all others  
14 similarly situated,

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Plaintiffs,

v.

16 JENNY CRAIG INC.,  
17 a Delaware corporation;  
18 JENNY CRAIG DIRECT, INC.,  
19 a Delaware corporation; and  
20 DOES 1 through 10, inclusive,

Defendants.

CASE NO. 37-2007-00082215-CU-OE-CTL

CLASS ACTION

**NOTICE OF ERRATA**

22 TO THE HONORABLE COURT, TO ALL PARTIES HEREIN AND TO THEIR  
23 ATTORNEYS OF RECORD:

24 Plaintiffs hereby submit the following List of Errata regarding the exhibits  
25 associated with the Class Action Complaint filed on Wednesday, November 21, 2007.

26 1. Exhibit "A", "Consent to Sue Form" for Kim McBride, was inadvertently  
27 omitted. Attached hereto as Exhibit "E" is a true and correct copy of the Consent to Sue  
28

1 Form for Kim McBride.

2       2.       Exhibit "B", "Consent to Sue Form" for Terry Salazar, was inadvertently  
3 omitted. Attached hereto as Exhibit "F" is a true and correct copy of the Consent to Sue  
4 Form for Terry Salazar.


5       3.       Exhibit "C", "Consent to Sue Form" for Tammy Helble, was inadvertently  
6 omitted. Attached hereto as Exhibit "G" is a true and correct copy of the Consent to Sue  
7 Form for Tammy Helble.

8       1.       Exhibit "D", "Consent to Sue Form" for Nancy Mello, was inadvertently  
9 omitted. Attached hereto as Exhibit "H" is a true and correct copy of the Consent to Sue  
10 Form for Nancy Mello.

11  
12  
13 **Dated:** November 29, 2007

14 **MASS & MONTES LLP**

15  
16  
17 By:



18 **Robert Montes, Jr.**

19 Attorneys for Plaintiffs Kim McBride, Terry Salazar,  
20 Tami Helble, and Nancy Mello  
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**EXHIBIT "E"**

**CONSENT TO SUE UNDER**  
**FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(b))**

I worked for Jenny Craig from approximately 6/2002  
MONTH/YEAR

to 7/2006 in Carlsbad California  
MONTH/YEAR CITY STATE

as a Program Director  
JOB TITLE(S)

I consent to be a party plaintiff in a lawsuit alleging that Jenny Craig and Jenny Direct have violated the Fair Labor Standards Act and applicable state labor law. I understand that this lawsuit seeks unpaid overtime and related damages that may be owed to me and other current and former employees of Jenny Craig and Jenny Direct.

I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by class counsel Mass & Montes LLP and other attorneys with whom they may associate.

DATED: 9-15, 2007

Signature: Kim McBride

Print Name: Kim McBride



Sep 11 07 07:47a

p. 3

**CONSENT TO SUE UNDER  
FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(b))**

I worked for Jenny Craig from approximately April 2001  
MONTH/YEAR

to Oct 2006 in Carlsbad California  
MONTH/YEAR CITY STATE

as a Consultant  
JOB TITLE(S)

I consent to be a party plaintiff in a lawsuit alleging that Jenny Craig and Jenny Direct have violated the Fair Labor Standards Act and applicable state labor law. I understand that this lawsuit seeks unpaid overtime and related damages that may be owed to me and other current and former employees of Jenny Craig and Jenny Direct.

I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by class counsel Mass & Montes LLP and other attorneys with whom they may associate.

DATED: 9/10/07, 2007

Signature: Terry Salazar

Print Name: Terry Salazar



Sep 11 07 07:47a

p. 2

**CONSENT TO SUE UNDER**  
**FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(b))**

I worked for Jenny Craig from approximately Feb. 1997  
MONTH/YEAR

to November 2006 in Carlsbad, California  
MONTH/YEAR CITY STATE

as a Consultant  
JOB TITLE(S)

I consent to be a party plaintiff in a lawsuit alleging that Jenny Craig and Jenny Direct have violated the Fair Labor Standards Act and applicable state labor law. I understand that this lawsuit seeks unpaid overtime and related damages that may be owed to me and other current and former employees of Jenny Craig and Jenny Direct.

I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by class counsel Mass & Montes LLP and other attorneys with whom they may associate.

DATED: September 9, 2007

Signature: Tammy Helble

Print Name: Tammy Helble



09/13/2007 13:06 FAX 714 850 5249

AAA DSU

001

**CONSENT TO SUE UNDER**  
**FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(b))**

I worked for Jenny Craig from approximately Nov, 2007  
MONTH/YEAR

to Feb, 2007 in Carlsbad California  
MONTH/YEAR CITY STATE

as a Consultant  
JOB TITLE(S)

I consent to be a party plaintiff in a lawsuit alleging that Jenny Craig and Jenny Direct have violated the Fair Labor Standards Act and applicable state labor law. I understand that this lawsuit seeks unpaid overtime and related damages that may be owed to me and other current and former employees of Jenny Craig and Jenny Direct.

I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by class counsel Mass & Montes LLP and other attorneys with whom they may associate.

DATED: Sept 13, 2007

Signature: Nancy Mello

Print Name: Nancy Mello



**COPY**

CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

2007 DEC 18 PM 1:43

CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 RICHARD FREY (SBN 174120)  
2 DAN CHAMMAS (SBN 204825)  
3 JENNIFER FERCOVICH (SBN 235002)  
4 McDERMOTT WILL & EMERY LLP  
5 2049 Century Park East, Suite 3800  
6 Los Angeles, CA 90067  
7 Telephone: 319.277.4110  
8 Facsimile: 319.277.4730

9 Attorneys for Defendant  
10 JENNY CRAIG INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

**BY FAX**

McDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

13 KIM MCBRIDE, TERRY SALAZAR,  
14 TAMMY HELBLE, and NANCY  
15 MELLO, individually and on behalf of  
16 all others similarly situated,

17 Plaintiffs,

18 v.

19 JENNY CRAIG INC., a Delaware  
20 corporation; JENNY CRAIG DIRECT,  
21 INC., a Delaware corporation; and  
22 DOES 1 through 10, inclusive,

23 Defendants.

CASE NO. 37-2007-00082215-CU-OE-  
CTL

DEFENDANT JENNY CRAIG INC.'S  
ANSWER TO COMPLAINT

LAS99 1531239-1.044653.0163

DEFENDANT'S ANSWER TO COMPLAINT

1 Defendant JENNY CRAIG, INC. ("Defendant") hereby answers, for itself and no  
 2 others,<sup>1</sup> the unverified complaint ("Complaint") of plaintiffs Kim McBride, Terry Salazar,  
 3 Tammy Helble and Nancy Mello ("Plaintiffs") herein as follows:

4 **GENERAL DENIAL**

5 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant  
 6 denies generally and specifically, each and every allegation in Plaintiffs' Complaint.  
 7 Defendant further generally and specifically denies that Plaintiffs have been damaged in  
 8 the sums alleged, or any other sum or at all, by reason of any act or omission to act on the  
 9 part of Defendant or any of its agents, servants, employees or representatives. Defendant  
 10 further denies, generally and specifically, that Plaintiffs are entitled to general,  
 11 compensatory, punitive or other damages, in any amount, by reason of any act or omission  
 12 on the part of Defendant, or on the part of their agents, servants, employees or  
 13 representatives.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Cause of Action)**

17 1. The Complaint, and each purported cause of action contained therein, is  
 18 barred in whole or in part by its failure to state facts sufficient to constitute a cause of  
 19 action against Defendant.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 2. Plaintiffs' alleged causes of action are barred in whole or in part by the  
 23 applicable statute of limitations, including, without limitation 29 U.S.C. 255, California  
 24 Code of Civil Procedure sections 337-343, and Business and Professions Code section  
 25 17208.

26  
 27  
 28 <sup>1</sup> Although the Complaint identifies an entity entitled JENNY CRAIG DIRECT, INC., no such entity  
 exists. As such, JENNY CRAIG, INC. is the only entity responding to the Complaint.

**THIRD AFFIRMATIVE DEFENSE**

**(Laches)**

3. Plaintiffs' alleged causes of action are barred in whole or in part by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

**(Waiver/Estoppel)**

4. Plaintiffs, by their conduct, have waived, and are estopped from asserting or enforcing, any claim in the Complaint and each purported cause of action contained therein.

**FIFTH AFFIRMATIVE DEFENSE**

**(Unclean Hands/*In Pari Delicto*)**

5. Each and every cause of action in the Complaint are barred by Plaintiffs' unclean hands and/or the doctrine of *in pari delicto*.

**SIXTH AFFIRMATIVE DEFENSE**

**(Conduct of Plaintiff)**

6. Plaintiffs are barred from recovery under the Complaint, and each purported cause of action contained therein, because any damages sustained by Plaintiffs were caused by their own conduct.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Offset)**

7. The Complaint, and each purported cause of action contained therein, is barred in whole or in part because Defendant is entitled to an offset against any purported damages Plaintiffs allegedly suffered.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Exemption)**

8. The Complaint, and each purported cause of action contained therein, is barred in whole or in part because Plaintiffs' work with Defendant is exempt from the wage/hour laws upon which he/she sues.

**NINTH AFFIRMATIVE DEFENSE****(Not Willful)**

9. Defendant, at all times relevant to the Complaint, acted in good faith and did not willfully fail to make any payments alleged to be due and payable to Plaintiffs.

**TENTH AFFIRMATIVE DEFENSE****(Failure to Mitigate)**

10. Plaintiffs have failed to use reasonable care to reduce and minimize as much as reasonably possible the damages, if any, brought about by the acts, events and circumstances alleged in the Complaint; and by such failure to mitigate damages, Plaintiffs were the direct and proximate cause of the damages, if any, substantiated by Plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE****(Privilege)**

11. The alleged actions, statements, and other actionable events attributed to Defendant or its agents, servants, employees, or representatives were absolutely or qualifiedly privileged.

**TWELFTH AFFIRMATIVE DEFENSE****(Good Faith)**

12. Any acts alleged to have been committed by Defendant or any of its agents, servants, employees, or representatives were reasonable and justified under the circumstances, and were based upon fair and honest reasons, regulated by good faith on the part of Defendant, and were not trivial, arbitrary, capricious, unrelated to business needs or goals, or pretextual.

**THIRTEENTH AFFIRMATIVE DEFENSE****(Failure to State a Cause of Action for Attorneys' Fees)**

13. Plaintiffs have failed to allege a cause of action for which attorneys' fees may be awarded and/or failed to allege facts sufficient to warrant an award of attorneys' fees.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action for Punitive Damages)**

14. Plaintiffs have failed to allege a cause of action for which punitive damages may be awarded and/or failed to allege facts sufficient to warrant an award of punitive damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Exhaust)**

15. The Complaint, and each of its purported causes of action, is barred in whole or in part by Plaintiffs' failure to exhaust and/or pursue internal and/or administrative remedies, including but not limited to adjudicating the matters raised in the Complaint with the California Division of Labor Standards Enforcement (DLSE).

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Agreement to Arbitrate)**

16. Plaintiffs' civil action is barred by the parties' agreement to arbitrate all claims arising out of Plaintiffs' work with Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(No Commonality, Typicality, and/or Adequacy)**

17. As to all of Plaintiffs' alleged claims in the Complaint, a collective or class action would not be the superior method for resolving the claims of Plaintiffs and other current and former employees, as described in the Complaint, because they do not share a community of interest, and they cannot satisfy the requirements of typicality, and/or adequacy necessary to support a collective class action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Jurisdiction)**

18. Plaintiffs' alleged causes of action are barred in whole or in part because the court has no jurisdiction over the subject of the Complaint.

///

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**NINETEENTH AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

19. Plaintiffs lack standing to pursue the Complaint and each purported cause of action contained therein.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Res Judicata)**

20. Plaintiffs' claims are barred by the doctrine of *res judicata* to the extent that any member of the purported class pursued and resolved to final judgment any claim alleged in the Complaint.

Defendant reserves the right to assert additional affirmative defenses in the event investigation and discovery indicate they would be appropriate.

WHEREFORE, Defendant prays for judgment on the Complaint as follows:

1. That Plaintiffs take nothing by the Complaint;
2. That judgment be entered against Plaintiffs and in favor of Defendant;
3. That Defendant be awarded its costs of suit, including reasonable attorneys' fees; and
4. For such other and additional relief as the Court deems just and proper.

Dated: December 18, 2007

McDERMOTT WILL & EMERY LLP

By: 

Dan Chammas  
Attorneys for Defendant  
JENNY CRAIG INC.

PROOF OF SERVICE

I, Karen S. Kimura, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2049 Century Park East, Suite 3800, Los Angeles, California 90067-3218. On December 18, 2007, I served a copy of the within document(s):

DEFENDANT JENNY CRAIG INC.'S ANSWER TO COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Robert Montes, Jr., Esq.  
MASS & MONTES LLP  
10100 Santa Monica Blvd. Suite 300  
Los Angeles, CA 90067

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 18, 2007, at Los Angeles, California.

  
Karen S. Kimura

LAS99 1532172-1.044653.0163

DEFENDANT'S ANSWER TO COMPLAINT

PROOF OF SERVICE

I, Karen S. Kimura, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2049 Century Park East, Suite 3800, Los Angeles, California 90067-3218. On December 19, 2007, I served a copy of the within document(s):

NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. 1441(B)

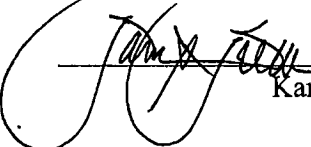
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Robert Montes, Jr., Esq.  
MASS & MONTES LLP  
10100 Santa Monica Blvd. Suite 300  
Los Angeles, CA 90067

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 19, 2007, at Los Angeles, California.

  
Karen S. Kimura

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 145727 - BH**

**December 19, 2007  
15:05:48**

**Civ Fil Non-Pris**

USAO #: 07CV2382 CIVIL FILING

Judge.: BARRY T MOSKOWITZ

Amount.: \$350.00 CK

Check#: BC# 7324

**Total-> \$350.00**

FROM: CIVIL FILING  
MC BRIDE ET AL V. JENNY CRAIG

ORIGINAL

07 CV 2382 BTM RBB

## CIVIL COVER SHEET

JS 44  
(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.

## I. (a) PLAINTIFFS

KIM MCBRIDE, TERRY SALAZAR, TAMMY HELBLE  
and NANCY MELLO, individually and on  
behalf of others similarly situated

## DEFENDANTS

JENNY CRAIG, INC., a Delaware  
Corporation, JENNY CRAIG DIRECT, INC., a  
Delaware Corporation, and DOES 1 through  
10, inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Montes, Jr. (SBN 159137)  
Mass & Montes LLP  
10100 Santa Monica Boulevard, Suite 300  
Los Angeles, CA 90067  
Telephone: 310.651.9955

## ATTORNEYS (IF KNOWN)

Richard Frey (SBN 174120)  
McDermott Will & Emery LLP  
2049 Century Park East, Suite 3800  
Los Angeles, CA 90067-3218  
Telephone: 310.277.4110

## II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 29 U.S.C. Section 204 et. seq. Plaintiffs allege claims against Jenny Craig, Inc. et al. under the FLSA and supplemental state law claims related to the payment of wages; 28 U.S.C. Section 1441(b) Defendants may remove based on federal question jurisdiction.

## V. NATURE OF SUIT (PLACE AN 'X' IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Patent	<input type="checkbox"/> 450 Commercial/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Social Security	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 HIA (13958)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 430 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 431 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 432 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act
		<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 894 Energy Allocation Act
		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes
				<input type="checkbox"/> 890 Other Statutory Actions

## VI. ORIGIN

(PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 0.00  
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Janis L. Sammartino

Docket Number 06CV2533 JLS (AJB)

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 19, 2007

PAID \$350 12/19/07 BY KORT # 145727  
::ODMANPCDOCSWORDPERFECT228161 January 24, 2000 (3:10pm)

BY FAX